



Senate

General Assembly

File No. 634

January Session, 2003

Substitute Senate Bill No. 969

Senate, May 5, 2003

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING INVESTIGATIVE SUBPOENAS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2003*) For the purposes of
2 sections 1 to 12, inclusive, of this act:

3 (1) "Property" includes, but is not limited to, documents, books,
4 papers, records, films, recordings and other tangible things;

5 (2) "Prosecuting official" means the Chief State's Attorney, a deputy
6 Chief State's Attorney or a state's attorney; and

7 (3) "Subpoena" means a subpoena ad testificandum or a subpoena
8 duces tecum, or both.

9 Sec. 2. (NEW) (*Effective October 1, 2003*) (a) In the investigation of
10 conduct that would constitute the commission of a class A or B felony
11 or a violation of chapter 949c or section 53a-147, 53a-148, 53a-161a, 53a-
12 161c or 53a-161d of the general statutes, including the investigation of

13 whether a defense or affirmative defense raised with respect to the
14 commission of such a felony or violation constitutes a valid defense
15 under the law, a prosecuting official, in the performance of such
16 official's duties during such investigation, shall have the authority to
17 compel by subpoena the appearance and testimony of witnesses and
18 the production of property concerning the matter under investigation.
19 No prosecuting official may issue a subpoena under this section to an
20 attorney with respect to a former or current client of such attorney, or
21 to any person who assists or assisted such attorney in representing
22 such client, that seeks testimony protected by the attorney-client
23 privilege or property constituting attorney work product. No
24 prosecuting official may issue a subpoena under this section unless
25 authorized by a judge of the Superior Court pursuant to section 3 of
26 this act.

27 (b) In any matter in which a person has been arrested and criminal
28 charges are pending against such person, the appearance and
29 testimony of witnesses and the production of property shall be
30 governed by the court pursuant to the rules of discovery and shall not
31 be subject to the issuance of a subpoena under this section.

32 Sec. 3. (NEW) (*Effective October 1, 2003*) (a) A prosecuting official
33 who seeks to issue a subpoena under section 2 of this act shall submit
34 an application to a judge of the Superior Court. Such application shall
35 include an affidavit sworn to by such prosecuting official stating that
36 such official:

37 (1) Has reasonable grounds to believe that a class A or B felony or a
38 violation of chapter 949c or section 53a-147, 53a-148, 53a-161a, 53a-161c
39 or 53a-161d of the general statutes has been committed, or a defense or
40 affirmative defense has been raised with respect to the commission of
41 such a felony or violation, and the facts that form the basis for such
42 belief;

43 (2) Has reasonable grounds to believe that the person to be
44 summoned to appear and give testimony or produce property has
45 information relevant and necessary to the investigation concerning the

46 alleged commission of a class A or B felony or a violation of chapter
47 949c or section 53a-147, 53a-148, 53a-161a, 53a-161c or 53a-161d of the
48 general statutes, or the validity of a defense or affirmative defense
49 raised with respect to the commission of such a felony or violation, and
50 the facts that form the basis for such belief;

51 (3) Has reasonable grounds to believe that the appearance and
52 testimony of such person or the production of property by such person
53 would not occur or be available without the issuance of a subpoena,
54 and the facts that form the basis for such belief; and

55 (4) (A) Has made reasonable efforts to secure such appearance,
56 testimony and property without recourse to a subpoena and those
57 efforts have been unsuccessful, or (B) has not made reasonable efforts
58 to secure such appearance, testimony and property without recourse to
59 a subpoena because making such reasonable efforts would
60 significantly hinder the investigation.

61 (b) If the judge finds that the provisions of subsection (a) of this
62 section have been satisfied, such judge may grant the application for
63 the issuance of a subpoena by such prosecuting official. The judge may
64 specify the date that such subpoena shall be served upon the person,
65 which date shall be not less than one nor more than seven working
66 days prior to the date scheduled for such person's appearance. Except
67 as provided in subsection (c) of this section, the judge shall order the
68 court file, including the application and affidavit submitted pursuant
69 to subsection (a) of this section, be sealed as to the public and not be
70 subject to disclosure.

71 (c) Not later than twenty-four hours after the issuance of such
72 subpoena, a copy of the application and affidavit submitted by the
73 prosecuting official pursuant to subsection (a) of this section shall be
74 given to the person summoned. The judge may, by order, dispense
75 with the requirement of giving a copy of the application and affidavit
76 to such person at such time if the prosecuting official files a detailed
77 affidavit with the judge that demonstrates to the judge that (1) the
78 personal safety of a confidential informant would be jeopardized by

79 the giving of a copy of the application and affidavit at such time, (2)
80 the issuance of the subpoena is part of a continuing investigation that
81 would be adversely affected by the giving of a copy of the application
82 and affidavit at such time, or (3) the giving of such application and
83 affidavit at such time would require disclosure of information or
84 material prohibited from being disclosed by chapter 959a of the
85 general statutes. If the judge dispenses with the requirement of giving
86 a copy of the application and affidavit at such time, such order shall
87 not affect the right of the person summoned to obtain such copy at any
88 subsequent time. No such order shall limit the disclosure of such
89 application and affidavit to the attorney for a person arrested in
90 connection with or subsequent to the issuance of the subpoena unless,
91 upon motion of the prosecuting official within two weeks of such
92 person's arraignment, the court finds that the state's interest in
93 continuing nondisclosure substantially outweighs the defendant's
94 right to disclosure. Any order dispensing with the requirement of
95 giving a copy of the application and accompanying affidavit to the
96 person summoned not later than twenty-four hours after the issuance
97 of the subpoena shall be for a specific period of time, not to exceed two
98 weeks beyond the date the subpoena is issued. Within that time period
99 the prosecuting official may seek an extension of such period.

100 Sec. 4. (NEW) (*Effective October 1, 2003*) (a) Any subpoena issued
101 pursuant to sections 1 to 12, inclusive, of this act shall (1) compel only
102 the appearance and testimony of witnesses and the production of
103 property relevant and necessary to the investigation being conducted,
104 (2) specify with reasonable particularity any property to be produced,
105 and (3) require only the production of documents or records covering a
106 reasonable period of time.

107 (b) Any subpoena issued pursuant to sections 1 to 12, inclusive, of
108 this act shall be served at least one working day prior to the date
109 scheduled for the appearance of the witness, unless a judge of the
110 Superior Court in the judicial district where compliance with the
111 subpoena is sought, as provided in section 5 of this act, otherwise
112 orders for good cause shown.

113 (c) Any subpoena issued pursuant to sections 1 to 12, inclusive, of
114 this act shall contain a notice advising the person summoned of the
115 following: (1) The purpose of the investigation, (2) whether such
116 person is a target or possible target of the investigation, (3) that such
117 person has the right not to be compelled to give evidence against
118 himself or herself, (4) that such person has the right to have counsel
119 present and to consult with such counsel and, if such person is
120 indigent, to have counsel appointed to represent him or her, and (5)
121 that such person has the right to file a motion to quash or modify the
122 subpoena.

123 Sec. 5. (NEW) (*Effective October 1, 2003*) Any subpoena issued
124 pursuant to sections 1 to 12, inclusive, of this act shall compel the
125 witness to appear and testify or produce the property in the presence
126 of a judge at a specified location in a courthouse in the judicial district
127 where the incident or incidents subject to investigation are alleged to
128 have occurred or, if the investigation is being conducted by a
129 prosecuting official of a judicial district other than the judicial district
130 where the incident or incidents subject to investigation are alleged to
131 have occurred, in a courthouse in that judicial district.

132 Sec. 6. (NEW) (*Effective October 1, 2003*) If any subpoena is issued
133 pursuant to sections 1 to 12, inclusive, of this act for the production of
134 the medical records, including psychiatric records, of a person, the
135 prosecuting official shall give written notice of the issuance of such
136 subpoena to such person. Such person shall have standing to file a
137 motion to quash the subpoena in accordance with section 9 of this act.
138 All medical records, including psychiatric records, that are produced
139 pursuant to a subpoena issued pursuant to sections 1 to 12, inclusive,
140 of this act, shall be designated as confidential records and maintained
141 in a confidential manner at the office of the prosecuting official
142 conducting the investigation until an arrest is made as a result of the
143 investigation.

144 Sec. 7. (NEW) (*Effective October 1, 2003*) (a) Whenever a subpoena is
145 issued pursuant to sections 1 to 12, inclusive, of this act, the

146 prosecuting official shall, not later than twenty-four hours after service
147 of the subpoena, excluding weekends and holidays, give written notice
148 of the issuance of the subpoena to the presiding judge for criminal
149 matters in the courthouse where compliance with the subpoena is
150 required. Such notice shall include the identity of the person and, if the
151 production of property is compelled, a description of the property.
152 Such notice shall be confidential and not subject to disclosure. The
153 failure to give such notice shall not invalidate the subpoena. Such
154 presiding judge shall assign a judge of the Superior Court to preside
155 over the proceeding. The assignment of such judge shall be
156 confidential and not subject to disclosure. The proceeding shall not be
157 open to the public. The judge assigned to preside over the proceeding
158 may, for good cause shown, grant a continuance for such period as
159 such judge deems necessary.

160 (b) Prior to any witness being questioned, the prosecuting official
161 shall advise such person of the following: (1) The purpose of the
162 investigation, (2) whether such person is a target or possible target of
163 the investigation, (3) that such person has the right not to be compelled
164 to give evidence against himself or herself, and (4) that such person
165 has the right to have counsel present and to consult with such counsel
166 and, if such person is indigent, to have counsel appointed to represent
167 him or her. The presiding judge shall assure that such rights are not
168 infringed.

169 (c) A court reporter or assistant court reporter shall make a record of
170 the proceeding. The record of the proceeding shall be sealed and not
171 subject to disclosure, except that any witness who appeared and
172 testified shall be allowed access, at all reasonable times, to the record
173 of such witness' own testimony and shall have the right to receive a
174 copy of the transcript of the record of such testimony.

175 Sec. 8. (NEW) (*Effective October 1, 2003*) If any witness properly
176 summoned fails to appear or to produce any property specified in the
177 subpoena or, if having appeared, fails to answer any proper question,
178 the prosecuting official may apply to a judge of the Superior Court in

179 the judicial district as provided in section 5 of this act requesting the
180 issuance of a *capias* or an order of contempt, as appropriate, with
181 respect to such witness. The application of the prosecuting official and
182 the order of the court shall be sealed as to the public and not be subject
183 to disclosure. The hearing on the application shall not be open to the
184 public.

185 Sec. 9. (NEW) (*Effective October 1, 2003*) (a) Whenever a subpoena
186 has been issued to compel the appearance and testimony of a witness
187 or the production of property pursuant to sections 1 to 12, inclusive, of
188 this act, the person summoned may file a motion to quash the
189 subpoena with the chief clerk of the court for the judicial district as
190 provided in section 5 of this act. No fees or costs shall be assessed.

191 (b) The party filing the motion to quash shall be designated as the
192 plaintiff and the prosecuting official shall be designated as the
193 defendant.

194 (c) The motion, upon its filing, shall be sealed as to the public. The
195 motion shall be referred to the presiding criminal judge of the court for
196 hearing or for assignment to another judge for hearing. Unless
197 otherwise ordered by the judge conducting the hearing, the hearing
198 shall be conducted in camera and the file on the motion shall be sealed
199 as to the public, subject to further order of the court.

200 (d) The motion shall be expeditiously assigned and heard. The date
201 and time of the hearing shall be established by the clerk after
202 consultation with the judge assigned to conduct the hearing. The clerk
203 shall give notice to the parties of the hearing so scheduled.

204 (e) A judge may quash or modify any subpoena issued pursuant to
205 sections 1 to 12, inclusive, of this act for any just cause as may be found
206 by such judge.

207 Sec. 10. (NEW) (*Effective October 1, 2003*) (a) In any investigation
208 conducted pursuant to sections 1 to 12, inclusive, of this act, a
209 prosecuting official may apply to a judge of the Superior Court for an

210 order granting immunity from prosecution to any person whom the
211 state calls or intends to call as a witness if the prosecuting official finds
212 that the testimony of the person is necessary to the investigation of the
213 case. Such immunity may provide that the person will not be
214 prosecuted or subjected to any penalty or forfeiture (1) for or on
215 account of any testimony given or evidence produced by such person,
216 or for or on account of any evidence discovered as a result of or
217 otherwise derived from testimony given or evidence produced by such
218 person, or (2) for or on account of any transaction, matter or thing
219 concerning which such person gives testimony or produces evidence.
220 A person who receives immunity under this subsection shall not be
221 immune from prosecution for perjury or contempt committed while
222 giving such testimony or producing such property.

223 (b) No person who has been properly served with a subpoena
224 pursuant to sections 1 to 12, inclusive, of this act and receives
225 immunity under subsection (a) of this section, shall be excused from
226 appearing and testifying or producing any property before the
227 prosecuting official concerning an investigation pursuant to sections 1
228 to 12, inclusive, of this act upon the ground or for the reason that the
229 testimony or property required of such person may tend to convict
230 such person of a crime or subject such person to a penalty or forfeiture.

231 Sec. 11. (NEW) (*Effective October 1, 2003*) All information and
232 property obtained by a prosecuting official as a result of the issuance
233 of a subpoena pursuant to sections 1 to 12, inclusive, of this act shall be
234 confidential and not subject to disclosure, except (1) such information
235 and property as should, in the opinion of such official, be used or
236 disclosed in the performance of the official duties of such official, or (2)
237 as otherwise required by law or court order. Any exculpatory
238 information obtained with respect to any person shall be disclosed to
239 such person as required by law.

240 Sec. 12. (NEW) (*Effective October 1, 2003*) All property produced as a
241 result of the issuance of a subpoena pursuant to sections 1 to 12,
242 inclusive, of this act shall be returned to the person from whom it was

243 received if no criminal prosecution is commenced involving the use of
244 such property or shall be otherwise disposed of as provided by law.

245 Sec. 13. Section 51-296 of the general statutes is repealed and the
246 following is substituted in lieu thereof (*Effective October 1, 2003*):

247 (a) In any criminal action, in any habeas corpus proceeding arising
248 from a criminal matter, in any extradition proceeding, [or] in any
249 delinquency matter or in any proceeding in which a witness has been
250 summoned by a subpoena issued pursuant to section 2 of this act, the
251 court before which the matter is pending shall, if it determines after
252 investigation by the public defender or [his] the public defender's
253 office that a defendant or a witness summoned by a subpoena issued
254 pursuant to section 2 of this act is indigent as defined under this
255 chapter, designate a public defender, assistant public defender or
256 deputy assistant public defender to represent such indigent defendant
257 or witness, unless, in a misdemeanor case, at the time of the
258 application for appointment of counsel, the court decides to dispose of
259 the pending charge without subjecting the defendant to a sentence
260 involving immediate incarceration or a suspended sentence of
261 incarceration with a period of probation or the court believes that the
262 disposition of the pending case at a later date will not result in a
263 sentence involving immediate incarceration or a suspended sentence
264 of incarceration with a period of probation and makes a statement to
265 that effect on the record. If it appears to the court at a later date that, if
266 convicted, the sentence of an indigent defendant for whom counsel has
267 not been appointed will involve immediate incarceration or a
268 suspended sentence of incarceration with a period of probation,
269 counsel shall be appointed prior to trial or the entry of a plea of guilty
270 or nolo contendere.

271 (b) In the case of codefendants, the court may appoint one or more
272 public defenders, assistant public defenders or deputy assistant public
273 defenders to represent such defendants or may appoint counsel from
274 the trial list established under section 51-291.

275 (c) Prior to [a defendant's appearance in court] the appearance in

276 court of a defendant in any matter specified in subsection (a) of this
 277 section or of a witness summoned by subpoena issued pursuant to
 278 section 2 of this act, a public defender, assistant public defender or
 279 deputy assistant public defender, upon a determination that the
 280 defendant or witness is indigent pursuant to subsection (a) of section
 281 51-297, shall be authorized to represent the defendant or witness until
 282 the court appoints counsel for such defendant or witness.

283 Sec. 14. (NEW) (*Effective October 1, 2003*) On October 1, 2004, and
 284 annually thereafter, the Chief State's Attorney shall submit a report to
 285 the joint standing committee of the General Assembly having
 286 cognizance of matters relating to criminal law and procedure
 287 concerning the issuance of subpoenas pursuant to sections 1 to 12,
 288 inclusive, of this act in the preceding year. The report shall include the
 289 following information: (1) The number of applications submitted for
 290 the issuance of a subpoena, and the number of applications granted or
 291 denied, (2) the statutory offense or offenses allegedly committed that
 292 were the subject of the investigation, (3) the number of motions to
 293 quash a subpoena that were filed, and the number of motions granted
 294 or denied, (4) the number of orders granting a witness immunity from
 295 prosecution, (5) the number of investigations concluded and the final
 296 result of such investigations, and (6) the status of any criminal
 297 prosecution resulting from an investigation.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>
Sec. 7	<i>October 1, 2003</i>
Sec. 8	<i>October 1, 2003</i>
Sec. 9	<i>October 1, 2003</i>
Sec. 10	<i>October 1, 2003</i>
Sec. 11	<i>October 1, 2003</i>
Sec. 12	<i>October 1, 2003</i>

Sec. 13	<i>October 1, 2003</i>
Sec. 14	<i>October 1, 2003</i>

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Criminal Justice, Div.; Judicial Dept.; Pub. Defender Serv. Com.	GF - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill authorizes any state prosecutor who is investigating the commission of a class A or B felony or certain other crimes to apply to a Superior Court judge for a subpoena. It specifies the procedures that must be followed and requires the chief state's attorney to report to the Judiciary Committee on October 4, 2004, and annually thereafter, on the use of subpoenas under the bill. Any workload increase associated with these changes could be accommodated within budgeted resources.

OLR Bill Analysis

sSB 969

AN ACT CONCERNING INVESTIGATIVE SUBPOENAS**SUMMARY:**

This bill allows a prosecuting official, after authorization by a Superior Court judge, to subpoena a person to testify or produce property necessary and relevant (1) to an investigation into the possible commission of a class A or B felony or certain other crimes or (2) to determine whether a defense or affirmative defense raised regarding one of these crimes is valid. The other crimes are different types of racketeering, bribery and bribe receiving, bid rigging, and paying or receiving kickbacks.

The bill includes provisions for:

1. applying for and quashing subpoenas;
2. advising a person of certain information and rights;
3. enforcing a subpoena after a person fails to appear, produce documents, or answer questions; and
4. granting immunity to a person the state calls or intends to call as a witness.

It also requires the chief state's attorney to report annually to the Judiciary Committee on the use of subpoenas, beginning October 1, 2004.

Under the bill, the court controls the appearance and testimony of witnesses and the production of property under its rules of discovery when a person is arrested and has criminal charges pending against him.

EFFECTIVE DATE: October 1, 2003

SUBPOENAS

Application Requirements

The bill requires prosecuting officials to apply to a Superior Court judge for a subpoena. These officials are the chief state's attorney, a deputy chief state's attorney, or a state's attorney. The judge can authorize the use of a subpoena if satisfied with the application.

The application must include an official's sworn affidavit stating the facts that form the basis for his reasonable belief that (1) a class A or B felony or one of the other eligible crimes has been committed or a defense has been raised to one of those crimes, (2) the person summoned has necessary and relevant information, and (3) the testimony of the person or production of the property will not occur without a subpoena. Property includes documents, books, papers, records, films, recordings, and other things. The official must also state that reasonable efforts to secure the testimony or property without a subpoena were unsuccessful or that reasonable efforts would significantly hinder the investigation.

The official cannot subpoena an attorney about a current or former client or anyone who assists or assisted the attorney in representing the client for testimony that is protected by the attorney-client privilege or property that is the attorney's work product (such as notes or memos prepared for litigation).

Force of Subpoena

The bill requires the subpoena to (1) compel the appearance and testimony of a witness or the production of property relevant and necessary to the investigation, (2) specify with reasonable particularity any property to be produced, and (3) require production of documents or records covering a reasonable period of time.

The subpoena can compel attendance and testimony or production of property before a judge at a specific location in a courthouse in the judicial district where the underlying incidents allegedly occurred or where the prosecuting official is.

WITNESSES***Notice to Witness***

The bill requires the subpoena to advise a person and the prosecuting official to advise a witness:

1. of the purpose of the investigation;
2. whether he is the target or possible target of the investigation;
3. of his right not to give evidence against himself; and
4. of his right to have counsel present, to consult counsel, and to have counsel appointed for him if he is indigent.

The subpoena must also advise a witness that he has the right to file a motion to quash or modify the subpoena.

Witness Rights

The presiding judge must insure that the witness' rights are not infringed.

The bill allows a public defender to represent an indigent witness summoned by a subpoena and authorizes him to represent the person until the court appoints counsel.

The judge must order the court file, including the application and affidavit, sealed and prohibit disclosure.

Disclosures to the Subject of the Subpoena

The bill requires a copy of the application and affidavit to be given to the person summoned within 24 hours of issuing a subpoena, unless the prosecuting official submits a detailed affidavit demonstrating to the judge that doing so would (1) jeopardize a confidential informant's personal safety, (2) adversely affect a continuing investigation that the subpoena is part of, or (3) require disclosure of information or material that cannot be disclosed under the wiretapping and electronic surveillance laws. An order to prevent disclosure must be for a specific time of up to two weeks after the subpoena issues, but the prosecuting official can seek an extension. An order does not affect the person's right to get copies at a later time.

An order also does not limit disclosure of the application and affidavit

to the attorney of someone arrested in connection with or after the subpoena issues unless the prosecuting official files a motion within two weeks of arraignment, and the court finds that the state's interest in not disclosing the documents substantially outweighs the defendant's right to disclosure.

Medical Records

The bill requires a prosecuting official to give written notice to a person whose medical records, including psychiatric records, are subpoenaed. That person has standing to file a motion to quash the subpoena. The medical records are confidential and the prosecuting official's office must maintain them in a confidential manner until the investigation results in an arrest.

Property

The bill requires property not involved in a criminal prosecution to be returned to the person who produced it or otherwise disposed of according to law.

PROCEDURES

Serving the Subpoena

The bill allows the judge to set the date for serving the subpoena on the person between one and seven working days before the date scheduled for the person's appearance. The subpoena must be served at least one working day before the date scheduled for the witness's appearance. A Superior Court judge in the judicial district where compliance is required can order otherwise for good cause.

Notice to Judge

The bill requires the prosecuting official to notify in writing the presiding judge for criminal matters in the courthouse where compliance with the subpoena is required within 24 hours of serving the subpoena (excluding weekends and holidays). The notice must include the identity of the person and a description of any property subpoenaed. The judge must assign a Superior Court judge to preside. Failure to notify does not invalidate the subpoena. The notice and assignment of a judge are confidential and cannot be disclosed. The proceedings are not public. The assigned judge can grant a

continuance for good cause for a period he deems necessary.

Record of Proceedings

The bill requires a court reporter or assistant court reporter to make a record of the proceeding. The record must be sealed and cannot be disclosed except that a witness has access to his testimony at any reasonable time and has the right to a copy of the transcript.

Confidentiality

The bill makes all information or property obtained by a prosecuting official under a subpoena confidential and prohibits disclosure except (1) as the official decides in the performance of his duties and (2) as otherwise required by law or court order. But any exculpatory information about a person must be disclosed to him if he is later arrested.

QUASHING A SUBPOENA

The bill allows a person summoned to appear or produce property to file a motion to quash a subpoena with the chief clerk of the court in the judicial district where appearance is required. There are no fees or costs for the motion. The motion is sealed. The presiding criminal judge of the court hears the motion or assigns it to another judge for a hearing. The motion must be expeditiously assigned and heard. The clerk consults with the judge to set the date and time of the hearing and gives notice to the parties. Unless the judge orders otherwise, the hearing is conducted in private, and the file is sealed.

The bill allows a judge to quash or modify a subpoena if he finds just cause.

FAILURE TO APPEAR, PRODUCE PROPERTY, OR ANSWER QUESTIONS

When a witness fails to appear, produce property, or answer proper questions, the bill allows a prosecuting official to apply to a Superior Court judge in the appropriate judicial district for a *capias* (a court order directing an officer to take the person into custody) or contempt order. The prosecuting official's application and the court order are sealed and cannot be disclosed. The hearing is not open to the public.

IMMUNITY

The bill allows a prosecuting official to apply to a Superior Court judge for a grant of immunity from prosecution for a person the state calls or intends to call as a witness if the testimony is necessary to investigate the case. The immunity can protect against prosecution, penalties, or forfeiture for (1) testimony given or evidence the witness produces, (2) evidence discovered or derived from his testimony or evidence, or (3) any transaction or thing that he testifies or provides evidence about. The person is not immune from prosecution for perjury or contempt committed while giving the testimony or producing the property.

The bill provides that a person properly subpoenaed and given immunity is not excused from testifying or producing property before a prosecuting official because it may tend to convict him of a crime or subject him to a penalty or forfeiture.

REPORT TO THE JUDICIARY COMMITTEE

The bill requires the chief state's attorney to report annually to the Judiciary Committee beginning October 1, 2004 on the use of subpoenas during the preceding year including the:

1. number of subpoenas requested, granted, and denied;
2. offenses allegedly committed that were the subject of investigations;
3. number of motions filed to quash subpoenas and the number granted or denied;
4. number of orders granting immunity from prosecution;
5. number of investigations concluded and their final results; and
6. status of criminal prosecutions resulting from investigations.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 26 Nay 14